

Submission 965 (Jeffrey R. Single, California Department of Fish and Game, October 19, 2011)



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October 13, 2011

Dan Leavitt
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, California 95814

Subject: Draft Project Environmental Impact Report (DEIR) and Draft Project Environmental Impact Statement (DEIS) and Section 4(f) Statement for the Merced to Fresno Section High-Speed Train Project
SCH No. 2009091125

Dear Mr. Leavitt:

The Department of Fish and Game (Department) has reviewed the DEIR/DEIS submitted by the California High Speed Rail Authority (Authority) for the Merced to Fresno Section of the high-speed train (HST) system (Project). The Project comprises one section of the nine section HST system and at full buildout would provide high-speed service on more than 800 miles of track, connecting the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. The system would use an electrified steel-wheel-on-steel-rail system capable of speeds up to 220 miles per hour (mph) on a fully grade-separated, access controlled track with state-of-the-art safety, signaling and automated control systems. The proposed Project DEIR/DEIS evaluates the project level impacts of the Merced to Fresno Section and includes three (3) alternative track alignments: the Union Pacific (UPRR) State Route 99 Alternative, the Burlington Northern Santa Fe (BNSF) Alternative, and a Hybrid Alternative that contains elements of both the UPRR and BNSF Alternatives. These alternatives would extend between and include the proposed Downtown Merced Station and Downtown Fresno Station. In addition, the DEIR/DEIS evaluates the impacts of siting a heavy maintenance facility at one of four (4) locations, including the Castle commerce center Site north of Merced, one on the UPRR alternative, one on the BNSF alternative, and one on the Hybrid alternative.

The Department has previously commented on both the Proposed California High-Speed Train System EIR/ EIS on August 31, 2004; the Bay Area to Central Valley Program EIR/EIS on September 25, 2007 (Draft EIR/EIS) and July 7, 2008 (Final EIR/EIS); the Notice of Preparation of a Draft Project Environmental Impact Report and Draft Project Environmental Impact Statement for the San Jose to Merced HST Project

Dan Leavitt
October 13, 2011
Page 2

on April 8, 2009; the Notice of Preparation of a Draft Project Environmental Impact Report and Draft Project Environmental Impact Statement for the Merced to Bakersfield HST Project on April 8, 2009; and provided comments on the Biological Resources and Wetlands Section of the California High Speed Train Project Level Environmental Analysis Methodologies on October 15, 2009.

The Merced to Fresno Section DEIR/DEIS is intended to build upon work completed earlier in a broader, statewide environmental impact analysis and is a critical first phase of the HST serving as a link in connecting the Bay Area HST sections to the sections south of Fresno to Los Angeles. The Authority and the Federal Railroad Administration's (FRA) prior program Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) documents resulted in selection of two different preferred alternatives for the Merced to Fresno Section. The Authority and the FRA selected the existing BNSF rail route as the preferred alternative for the Central Valley HST between Merced and Fresno in the 2005 Statewide Program EIR/EIS decision documents. However, in the subsequent 2008 Bay Area to Central Valley Program EIR/EIS and the Authority's 2010 Bay Area to Central Valley Revised Program EIR, the Authority and FRA selected the UPRR route as the preferred alternative for the Merced to Fresno Section and also stated the BNSF would continue to be carried forward for further study. Therefore, the DEIR/DEIS for the Merced to Fresno Section of the HST project begins with an analysis of the corridors along both the UPRR and the BNSF.

The purpose of this letter is to provide the Authority with specific detail about the scope and content of environmental information related to the Department's areas of statutory responsibility that must be included in the DEIR/DEIS. This letter also highlights significant environmental issues and reasonable alternatives and mitigation measures that will need to be explored in the finalized DEIR/DEIS to allow the Department to make informed and necessary findings with regards to permitting the proposed project.

The Department continues to have concerns about the significant impacts to wildlife movement in the region that will result from placement of a grade-separated, access controlled track throughout the length of the Central Valley. Further, the DEIR/DEIS does not adequately address potential impacts to Department-owned or managed lands, threatened and endangered species, and sensitive habitats that would result from construction and operation of the proposed alignments and associated facilities. The Department offers the following comments and recommendations on the DEIR/DEIS regarding impacts to wildlife, the habitats on which they depend, and the Department's jurisdiction and role in conserving lands for the benefit of those species.

Conserving California's Wildlife Since 1870

Submission 965 (Jeffrey R. Single, California Department of Fish and Game, October 19, 2011) - Continued

Dan Leavitt
October 13, 2011
Page 3

Responsible Agency Authority

The Department has jurisdiction by law over natural resources affected by a project that are held in trust for the people of the State of California. The Department is a Trustee Agency with regard to the fish and wildlife of the State, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the Department. As a Trustee Agency, the Department consults with lead and responsible agencies and provides the requisite biological expertise to review and comment upon environmental documents and impacts arising from project activities.

The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered pursuant to Fish and Game Code Section 2081. If a project could result in the "take" of any species listed as threatened or endangered pursuant to the California Endangered Species Act (CESA), an incidental take permit issued by the Department should be obtained by the Authority. Based upon review of program-level EIRs for the HST, the Department anticipates that implementation of the proposed Project will result in "take" of one or more State-listed species and that acquisition of an incidental take permit is warranted. The Department should be contacted as early as possible to begin the Incidental Take Permitting process to reduce any Project or permitting delays.

The Department also has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource. For any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream, or use material from a streambed, the Department may require a Lake and Streambed Alteration (LSA) Agreement, pursuant to Section 1600 et seq. of the Fish and Game Code. Due to the size and linear alignment of the HST, the Department anticipates a LSA Agreement will be required for the numerous streams that will be impacted to varying degrees by the proposed project. The Department should be contacted when enough information is available to begin the LSA process.

As a Responsible Agency, the Department will rely on the EIR/EIS as prepared by the Authority to prepare and issue its own findings regarding the proposed project (CEQA Guidelines, Sections 15096 and 15381). The Department will use the Authority's environmental document if it adequately addresses the effects of those activities involved in the Project which the Department is required by law to carry out or approve. The document should summarize technical data, maps, plans, diagrams and similar information to permit a full assessment of all significant environmental impacts (CEQA Guidelines, Section 15147).

Dan Leavitt
October 13, 2011
Page 4

Potential Impacts to Wildlife Movement

As the Department has discussed in previous HST comment letters, the single biggest biological impact potentially arising from construction of the HST is the impact on regional movements of wildlife and connections between habitats. The HST has the potential to disrupt wildlife passages that are already hindered with existing obstacles, create long stretches of impediments, and further narrow areas of low or compromised permeability, which are already threatening the continued viability of many species. Construction of access controlled rail lines may create barriers to the movement of wildlife, thereby cutting them off from important food, shelter, or breeding areas. As the Department has stated in its numerous comment letters referenced above, the isolation of sub-populations limits the exchange of genetic material and puts populations at risk of local extinctions through genetic and environmental factors. Barriers can prevent the re-colonization of suitable habitat following local extirpations, ultimately putting the species at risk of extinction.

The construction and operation of HST will severely inhibit east-west wildlife movement along the Merced to Fresno Section. While the Authority continues to suggest it will examine the feasibility of implementing a variety of wildlife passes to aid animal movement along both sides of the rail line, it is unclear where and at what intervals these will be placed. This continues to be of concern to the Department, especially in light of the Department's previous recommendation that all segments of the railway that are not using existing rails be elevated. Elevation of the rails could reduce the impacts the HST system would have on animal movement and migration by allowing wildlife to pass freely underneath the entire length of the railway while providing the access controlled tracks that are required for HST. Elevated railways would be more effective in facilitating animal movement than the proposed wildlife underpasses and overpasses, which are not always effective. Because animals would be able to see through the underside of the tracks to the other side, they would be more likely to walk underneath the tracks than to use a tunnel or vegetated overpass where the view of the other side would be visually obstructed and the substrate and ground slope would vary from the surrounding areas.

The DEIR/DEIS does not analyze nor discuss the practicability of elevating the railway. Further, the examination of measures and potential mitigation to facilitate wildlife movement is restricted in the DEIR/DEIS to using the California Missing Linkages Project as a tool to narrow linkage to Essential Connectivity Areas (ECA) and to select features within the ECA. These features were limited to riparian corridors or natural waterways and did not examine the potential points along the three proposed alignments where contiguous or semi-contiguous habitat patches exist and largely overlooked the value of man-made waterways as corridors for movement. By restricting

Submission 965 (Jeffrey R. Single, California Department of Fish and Game, October 19, 2011) - Continued

Dan Leavitt
October 13, 2011
Page 5

965-1 | efforts to ensure passage for wildlife to a few widely spaced zones of riparian vegetation associated with select waterways, the DEIR/DEIS analysis appears to have overlooked easily identified opportunities to establish ancillary areas for wildlife movement. This narrow scope and analysis continues to be problematic in that it provides little difference between the impacts for each alignment alternative and this, in tandem with the insufficient mitigation actions to increase wildlife movement opportunities, belies the significance of the of the elimination of effective regional movements of wildlife and connections between habitats.

If wildlife movement passage structures will be used instead of elevated tracks, the Department continues to counsel that extensive research should be conducted before alignment selection to determine the appropriate locations, numbers and types of such structures. As was recommended in previous correspondence, methods to determine the best locations for wildlife movement structures or avoidance should include at a minimum: 1) track count surveys, 2) ditch crossing surveys, 3) monitoring trails with infrared or Trailmaster cameras, and 4) Global positioning system (GIS) habitat modeling to identify likely wildlife travel corridors and anthropogenic barriers (such as highways, canals, and reservoirs) at the landscape level. In addition, wildlife habitat linkages will need to be identified using habitat models, information from the movement studies, GIS analyses, and Department expertise. Specific alignments and wildlife passage structures, such as underpasses, overpasses, elevating the alignment and tunnels, may not be suitable for all species and locations and would need to be evaluated carefully.

965-2 | **Potential Impacts to Fish and Game Owned and Managed Lands**

Ecological Reserves, Wildlife Areas, and other Department-owned lands are acquired for the protection and enhancement of habitat for a wide variety of species and some of these lands are open to the public for wildlife viewing, hiking, hunting, fishing, and nature tours. The construction and operation of the proposed HST within or near Department lands could significantly reduce the wildlife and public use values of these lands as well as alter the way these lands are and can be managed by the Department. Some areas depend on visitor's fees for operation, maintenance, and management. The proposed HST may negatively impact the number of visitors to these areas resulting in reduced revenues; thereby reducing or eliminating the public recreational opportunities and wildlife habitat provided by the lands.

All the alignment Alternatives will impact the Department owned and managed San Joaquin River Ecological Reserve by construction of a bridge over the San Joaquin River at Camp Pashayan and will impact numerous other State and local jurisdiction owned parks and open space lands of conservation importance. In addition, the

Dan Leavitt
October 13, 2011
Page 6

965-2 | BNSF - BNSF Le Grand alignment will intersect the Department owned Le Grand Unit, the Great Valley Conservation Bank, privately owned lands under conservation easement, and lands currently in the process to become a new State and federally approved conservation bank. The Great Valley Conservation Bank was established to provide mitigation for impacts from other projects. The loss of this land would require significant compensation on the part of the Authority as this land was already used to compensate for other project impacts to Threatened and Endangered species.

965-3 | Moreover, the DEIR/DEIS suggests that in order to construct the elevated structure supported by columns across the Camp Pashayan property, the Authority may need to obtain easement rights through the property or purchase a portion of the State-owned land outright. There is no discussion on how the encroachment on the Le Grande Unit will be accomplished. The Secretary of Transportation may approve a project requiring the use of publicly owned land of a wildlife refuge only if there is no prudent and feasible alternative to using that land; and the project includes all possible planning to minimize harm to the wildlife refuges from the use. "Use" includes substantial impacts to wildlife resources due to close proximity of a transportation project (Department of Transportation Act 49 U.S.C. Section 303, formerly Section 4(f)). The DEIR/DEIS does not examine alternative alignments that will not impact Camp Pashayan. Additionally, there is no discussion of the potential of the HST to reduce the number and frequency of visitors who pay a fee for use that supports the operation, maintenance, and management of the Camp nor is there a provision to mitigate for the loss of recreation and wildlife values and revenue caused either by either the short-term disturbance from construction of the bridge or long-term impacts from noise and to the view shed.

965-4 | The Department recommends that the HST rail line that runs adjacent to Department lands, Federal land, State Parks lands or any other lands of conservation importance along the route be fully elevated in order to provide for adequate movement of species that inhabit these lands on either side of the tracks. Failure to do so would severely reduce the value of the lands and impact the Department's goal of preserving and protection sensitive species and their habitats.

965-5 | **Potential Impacts to Species and Habitat**

The DEIR/DEIS analyzed the potential impacts to specially-designated species and habitat resulting from construction and operation of the HST rail alignment by conducting queries of existing databases (i.e., California Natural Diversity Database), utilizing agency information, and conducting limited reconnaissance level field surveys from publicly accessible rights of way along or near the HST alternative alignments. The DEIR/DEIS contains a limited and incomplete description of the existing biological conditions in and around the HST project site, including all specially-designated species

Submission 965 (Jeffrey R. Single, California Department of Fish and Game, October 19, 2011) - Continued

Dan Leavitt
October 13, 2011
Page 7

965-5

and habitats that may occur in the vicinity. In order for the Department to make an intelligent and informed decision on potential impacts of the proposed project, extensive surveys will need to be conducted. Wildlife and plant surveys should follow protocols adopted by the Department and United States Fish and Wildlife Service (USFWS). Where they do not, or for species where protocols have not been developed, the Department and USFWS should be consulted for concurrence on a particular methodology before its use. Survey protocols for listed species and/or sensitive habitats should be approved by the Department, USFWS, and other relevant regulatory agencies prior to implementation. This will reduce the need for additional surveys prior to Department approval.

Further, compensation for permanent impacts to sensitive habitat types such as Great Valley mixed riparian forest and northern hardpan vernal pool are suggested in the DEIR to be compensated for at a ratio of 2 acres of replacement habitat for every acre impacted (2:1). However, there is no discussion as to how this was derived, the biological basis to determine the replacement value is sufficient to fully compensate the impacts, and where compensation will occur so that replacement habitat is assured to be in the same watershed as the loss. Additional information is necessary for the Department to determine if the mitigation is commensurate with the level of proposed impact for all the sensitive habitats within the proposed alternatives alignments.

Special Status Plant Species

The Department understands that in most areas, a single reconnaissance-level survey was conducted in early spring (March through May) in areas within the public right-of-way that contained potential habitat for special status plant species. This level of survey effort is not enough to conclude absence of special status plant species. Focused, repeated surveys should be conducted by a qualified botanist multiple times during the appropriate floristic period(s) to adequately assess the potential Project-related impacts to these and other listed plant species. The surveys should follow the guidelines developed by the Department (DFG, 2009) and the USFWS (USFWS, 2000) and include appropriate reference sites. In addition, the reference sites visited need to be documented and should be in the same vicinity of the proposed impact site and contain known populations of all the special status species that have the potential to occur within the alignments. Comprehensive survey work should be carried out in time to inform the final analysis of the DEIR/DEIS, and not be deferred to the pre-construction period. It is unlikely that the Department will be able to provide helpful comments for a project of this scale, unless appropriate surveys have been conducted. Deferral of appropriate surveys can lead to costly delays as time sensitive surveys may only be conducted during specific times of the year.

Dan Leavitt
October 13, 2011
Page 8

965-5

California Tiger Salamander (*Ambystoma californiense*)

The DEIR/DEIS affirms that no surveys for the State- and federally listed threatened California tiger salamander (CTS) were conducted in areas with suitable breeding or upland aestivation habitat within any of the proposed alternative alignments. Moreover, mitigation measure Bio-MM#23 states that prior to ground-disturbing activities, a preconstruction survey will be conducted of the construction footprint in accordance with the *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander* (USFWS 2003) and any CTS found within the Project footprint will be relocated in accordance with the referenced guidance document. The guidance document does not recommend the relocation of CTS as a minimization measure. Relocation also constitutes "take" (capture) as defined by Section 86 of the California Fish and Game Code and cannot be used as a minimization measure absent the issuance by the Department of an Incidental Take Permit (ITP) pursuant to Section 2081(b) of the Fish and Game Code. Further, the DEIR/DEIS suggests that mitigation of the impacts to CTS will be accomplished through the use of a mitigation bank or an in-lieu fee program. It should be noted that currently there are no Department approved mitigation banks or in-lieu fee programs available to purchase credits to mitigate impacts to CTS and to comply with the fully mitigate standard under CESA. As such, alternative mitigation would be evaluated during the ITP process and would be required by an ITP issued for the Project. Alternative mitigation and could include the purchase of land containing known CTS breeding and upland habitat, placing the land under a conservation easement, and assuring adequate funding the management of the habitat land for the benefit of CTS in perpetuity.

Special Status Raptors

The DEIR/DEIS states that pre-construction surveys for nesting special status raptors, including the State endangered and fully protected bald (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*), the fully protected white-tailed kite (*Elanus caeruleus*), and the State threatened Swainson's hawk (*Buteo swainsoni*) will be conducted no more than 30 days before commencing construction. If active nests are identified for bald or golden eagles; a 1,000-foot buffer will be established. The Department does not concur that this proposed buffer will be sufficient to reduce the potential risk of impacts to these fully protected species. The Department recommends the same no-disturbance buffer of 0.5 mile proposed for active Swainson's hawk nests is instituted for fully protected raptor species.

In summary, the Merced to Fresno section of the high-speed train (HST) system continues to have the potential to result in several significant impacts to California's wildlife. Construction and operation of the HST will create barriers to wildlife movement, impacts to Department owned and managed lands, and impacts to specially-designated species, and sensitive habitat.

Submission 965 (Jeffrey R. Single, California Department of Fish and Game, October 19, 2011) - Continued

Dan Leavitt
October 13, 2011
Page 9

The implementation of the Merced to Fresno section of the HST will continue to require close coordination between the Department and the Authority to ensure that construction and operation the HST will have a minimal impact to the public resources and to the wildlife of the State of California.

If you have any questions regarding these comments, please contact Annee Ferranti, Senior Environmental Scientist, at (559) 243-4014 ext. 227.

Sincerely,


for Jeffrey R. Single, Ph.D.
Regional Manager

cc: State Clearinghouse
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ec: See Page Ten

Dan Leavitt
October 13, 2011
Page 10

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Response to Submission 965 (Jeffrey R. Single, California Department of Fish and Game, October 19, 2011)

965-1

A Biological Resources and Wetlands Technical Report was prepared for the HST project in August 2011. The report was designed to be stand alone and included a summary of the project description and alternatives, study methods, the environmental setting, focusing on the biological resources present, including terrestrial and aquatic habitats and land cover types, habitats of concern, mitigation banks, special-status species, wildlife movement corridors, critical habitat, essential fish habitat as well as jurisdictional waters. The assessments of the habitat study area were conducted on properties where access had been granted, and, to the extent possible from publicly accessible roadways where property access had not been granted. In addition the report included results that quantified and discussed impacts and presented mitigation. The document addressed a range of effects to address NEPA and CEQA reporting requirements. Wildlife movement was addressed in the report and addressed movement corridors, linkages, connectivity areas, modeled wildlife corridors and the constraints that occur within these locations. Watercourse crossings were identified that occurred within these corridors and summarized as to the location of bridges, culverts and canals that provide movement opportunities, particularly those that are aligned with other linear infrastructure such as the UPRR and the SR99. The hydraulic features were assessed for their utility for wildlife movement within the corridor locations. The findings of that report were summarized in the DEIR/EIS.

The DEIR/EIS acknowledges the HST's potential to disrupt wildlife passages that are already hindered with existing obstacles. The EIR/EIS concludes a significant impact under CEQA for the Eastman Lake-Bear Creek Essential Connectivity Area (ECA) and the modeled wildlife corridors after mitigation is in place. This is discussed in the EIR/EIS Section 3.7.5 under Environmental Consequences direct and indirect effect for the construction period and project period in the Wildlife Movement Corridor subsections. As stated in the EIR/EIS, ECAs delineate lands that are likely important to wildlife movement between large, mostly natural areas at the statewide scale based on available data and assumptions provided in the California Essential Habitat Connectivity Project Report (Spencer et al. 2010).

The Essential Connectivity Project was commissioned by the California Department of Transportation (Caltrans) and CDFG in response to Assembly Bill 2785 that required CDFG to investigate, study and identify those areas in the state that are most essential as wildlife corridors and habitat linkages (A.B. 2785 2008). The Essential Connectivity

965-1

Project documentation notes that land use within the California Central Valley ecoregion, including the San Joaquin Valley has largely been converted to agriculture and urban land covers. In general, features identified that facilitated wildlife movement within linkages included riparian corridors or waterways, contiguous or semi-contiguous habitat patches, and culvert/bridge underpasses. The EIR/EIS focused the evaluation on the ECA and the riparian corridors since they have been documented as having limited but important permeability and were assessed for each of the Merced to Fresno project alternatives. The approach integrated water features including streambed crossings, canals, culverts as suggested in the study. Many of these crossings line up with adjacent facilities such as the UPRR and SR 99 where there are similar crossings that line up and would facilitate movement.

EIR/EIS Table 3.7-28 includes a summary of wildlife crossings with the ECA and modeled wildlife corridors by alternative. The crossings are shown for the riparian corridors and the linear water features. The table summarizes the number of crossing opportunities by alternative in combination with the total linear distance across the ECA and modeled wildlife corridors. More detailed technical information regarding the spacing of the crossings is illustrated in Figures 5-3 through 5-10 in the Biological Resources and Wetlands Technical Report (this is an appendix to the Final EIR/EIS). These include man-made waterways, as the comment letter acknowledges, such as single and multi-span bridges, culverts, canals and other linear hydraulic features. All of these features may provide some wildlife movement however, the crossings do have various utility and were assessed for their potential crossing value. As stated in the Technical Report on page 5-73, these values were assessed qualitatively based on their apparent openness factor (see through factor as comment references) which would be reflected in the design treatment.

The locations of the crossings are all associated with water features, inside and outside the ECA and modeled corridors. The emphasis of the assessment in the Technical Report was on those crossings inside the ECA and modeled wildlife corridors since these areas were identified as having potential landscape permeability. The assessment incorporated the findings of the Essential Connectivity Project as well as the wildlife Linkages –San Joaquin Valley project which identified those areas with remaining permeability, albeit with constraints. Thus, the locations of the crossings were assessed in these areas; although there are hydraulic crossings throughout the project.

Response to Submission 965 (Jeffrey R. Single, California Department of Fish and Game, October 19, 2011) - Continued

965-1

Within the project four mile stretch across the Eastman Lake – Bear Creek ECA, there are two existing wildlife bridge crossings. These two locations are the hydraulic crossings associated with Deadman Creek and Dutchman Creek, which are approximately 2.7 miles apart. These bridge crossings are aligned at a strategic and complementary location that will accommodate existing wildlife movement throughout the landscape. There are few significant impediments along these linear riparian features both upstream and downstream for several miles once beyond the project and UPRR and SR99 to the east and to the west. In addition the HST Project provides multiple undercrossing opportunities based on hydraulic locations within the ECA and modeled wildlife corridors. The HST Project offers up to two high-valued crossings in the ECA, where the bridges are planned, and offers up to eight lower-valued crossings in the modeled wildlife corridors to the south. These crossing opportunities are appropriate due to their location within the corridors and in the case of the bridges provide a suitable openness factor at locations with contiguous open space. The project is not promoting tunnels or vegetated overpasses. Other factors considered by the Technical Report and reflected in the EIR/EIS as establishing the value of crossings was the landscape cover leading to the crossing (such as the riparian canopy, scrub/shrub component or intermittent shrub cover that provides hiding places, escape cover or prey opportunities depending on the species). The Technical Report ranked crossings for low, moderate and high value. This technical data was summarized in the EIR/EIS..

965-2

The EIR/EIS acknowledges the effects to the San Joaquin River Ecological Reserve over the San Joaquin River at Camp Pashayan and the BNSF Le Grand alignment at the Department owned Le Grand Unit, the Great Valley Conservation Bank. For each of the alternatives in Section 3.7.5 Environmental Consequences, the document acknowledges that a portion of Camp Pashayan is within the construction footprint. Specific biological resource impacts within the construction footprint are incorporated into the impact acreages for species and habitat types. For the BNSF, the EIR/EIS acknowledges the impact from the BNSF Alternative on the Great Valley Conservation Bank. Compensatory mitigation is acknowledged as well on page 3.7-129 in Section 3.7.6 Mitigation Measures.

965-2

The impacts have been addressed for biological resources consistent with methods employed. All terrestrial and aquatic communities, special status species of plants and wildlife, waters of the United States and wetlands have all been assessed and both direct and indirect effects quantified. Whether the resource is associated with the San Joaquin River Ecological Reserve, or a conservation bank the acreages of plant community and habitat are quantified. Regarding the methods, the result of the literature review, aerial imagery mapping, and reconnaissance-level field surveys provided data that was evaluated with the construction footprint. Due to the right-of-entry limitations, suitable habitat for species was assumed to be occupied. In this manner, the mitigation/compensation program addresses a worst case, including those for special-status plant species, by assuming presence in all potentially suitable habitat. The degree of impact was determined based on the magnitude of affected habitat (i.e. acres) and the regulatory status of the resource. The degree of impact was analyzed with the NEPA effects definitions and the CEQA thresholds in defining the severity and significance of impact.

The Authority met with the Department on January 11th regarding wildlife movement corridors. The result of that meeting and further analysis and coordination efforts are underway and will be incorporated in the Final EIR/EIS documentation.

965-3

Any impacts to parks identified in Section 3.15.5 (Parks, Recreation, and Open Space) would be addressed by the mitigation measures identified in Section 3.15.6. To the extent possible the design of the HST project has minimized the impact on parks, recreation, and open space. As the design progresses any impacts to parks would be further reviewed, refined, and applied to further minimize the overall impacts. The Authority has coordinated closely with all the affected jurisdictions to establish the mitigation measures that would be implemented for any temporary and permanent park impacts, as outlined in the FEIR/EIS under Section 3.15, Parks, Recreation and Open Space, and Chapter 4, Section 4(f)/6(f) Evaluation.

As noted in Section 4.8 of the Draft EIR/EIS (Draft Section 4(f) 6(f) Evaluation), FRA and the Authority conducted an alternatives evaluation process as part of the HST project for the Merced to Fresno Section. This analysis considered potential impacts to 4(f)

Response to Submission 965 (Jeffrey R. Single, California Department of Fish and Game, October 19, 2011) - Continued

965-3

properties and concluded that there was no feasible and prudent HST alternative within the study area that would address the project purpose and need while simultaneously avoiding Section 4(f) properties. The Section 4(f) evaluation contains a summary of the avoidance alternatives considered at the corridor level and also resource specific avoidance where a 4(f) use would occur.

The 4(f) findings in the Draft EIR/EIS were preliminary and consistent with 49 U.S.C. 303. Under the statute, de minimis findings are subject to concurrence by the jurisdiction with ownership of the park/recreation resource. FRA engaged with the agencies with jurisdiction over the resources to discuss potential impacts and measures to minimize harm and seek concurrence with the de minimis findings. The Final EIR/EIS documents FRA's finding and documents consultation with these agencies.

965-4

All sensitive habitat environments are considered equally, with special mention on those Federal, state and park resources. Areas where there are wildlife corridors or protected areas identified have been studied to provide continuous wildlife movement opportunities. This has included the protection of existing drainages that already provide majority of the movement corridors. In addition, making culverts in line with existing culverts when adjacent to existing infrastructure are other opportunities to continue wildlife movement corridors.

See MR-Response-BIO-2

See MF-Response-BIO-3

965-5

Focused surveys for special-status species were only conducted in areas where right of entry was granted within the habitat study area. Large portions of the Study Area were not accessible in the field due to limited access. The methodology for the EIS-EIR assumes that all suitable habitats are occupied as a reasonable worst case scenario. The mitigation/compensatory commitment is commensurate with acres of direct and indirect effects to suitable habitat. Protocol special-status plant surveys conducted in Spring 2011 on accessible parcels did not detect any special status plants. Any

965-5

relocation effort for California tiger salamander would come after Section 2081 (b) of the Fish and Game code has been addressed and permitted. Mitigation/compensation for California tiger salamander includes fee title acquisition, conservation easements, and compliance with CFG 2081 (b) in Bio-MM#52. Bio-MM#29 acknowledges that buffers/monitoring for raptors will be conducted with the approval of CDFG.

Please refer to MF-Response-BIO-3, MF-Response-BIO-4 and MF-Response-BIO-5 regarding mitigation measures and further pre-construction surveys.

Submission 609 (Deborah Hysen, California Department of Corrections and Rehabilitation,
October 12, 2011)

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

EDMUND G. BROWN JR., GOVERNOR

FACILITY PLANNING, CONSTRUCTION AND MANAGEMENT

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October 12, 2011

Jeff Abercrombie, Area Program Manager Central Valley
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Dear Mr. Abercrombie:

COMMENTS ON MERCED TO FRESNO SECTION HIGH-SPEED TRAIN PROJECT
DRAFT ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT
STATEMENT

609-1

As stated in our Notice of Preparation comment letter dated April 11, 2011 to the California High-Speed Rail Authority, the California Department of Corrections and Rehabilitation (CDCR) is a responsible agency under the provisions of the California Environmental Quality Act (CEQA) in the final approval of two of the potential routes between Merced and Fresno because they pass within the grounds of two state adult correctional facilities situated east of Chowchilla in Madera County. Construction of any trackage, infrastructure, and/or associated support facilities on the grounds of either the Valley State Prison for Women (VSPW) or the Central California Women's Facility (CCWF) would require CDCR approval given the critical overriding nature of state prison operations and the importance of protecting public safety. While CDCR is supportive of improving transportation in the San Joaquin Valley it believes that placement of High-Speed Rail improvements on the grounds of these two prisons would be incompatible with the prisons' respective missions and is unnecessary given the availability of adjacent land that does not have the same existing constraints.

The Merced to Fresno team met with CDCR staff on June 29, 2011 and coordinated during preparation of the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for this segment of the high-speed train project. As a result of this interagency coordination a mitigation measure (S&S-MM#1), discussed below, was included in the Draft EIR/EIS that would avoid impacts to VSPW with a modified track alignment.

CDCR still has the following specific concerns with the proposed trackage alignments for the "Hybrid Alternative" and the "Avenue 24 Wye Connecting to BNSF Alternative" within or immediately adjacent to VSPW and CCWF:

Jeff Abercrombie, Area Program Manager Central Valley
Page 2

609-1

Maintaining Local Access. Avenue 24 and Road 22 serve as the principal roadways to VSPW and CCWF from the Chowchilla area so maintaining the integrity of these roadways is essential to long-term operation of these facilities. The main access to VSPW is from Avenue 24; the main access to CCWF is from Road 22 via Avenue 24. Regardless of the final routes selected by the Commission for either the BNSF turning wye or the Hybrid Alternative it is essential to the continued operation of these two prisons that these roads remain a viable element of the local street system.

609-2

Trackage Encroachment onto VSPW. The proposed alignment of the Avenue 24 Wye Connecting to BNSF Alternative passes well within the grounds of VSPW. This alignment also requires construction of an overpass on Road 21 that would be situated immediately west of the main prison complex. Encroachment onto the grounds of the state-owned property that comprises VSPW is incompatible with CDCR security standards given the prison's perimeter would be in close proximity to the trackage; this alignment would also potentially endanger the integrity of the secure perimeter and adjacent inmate housing units in a train derailment. A derailment on this section of the line would have catastrophic consequences to prison operations, the continuity of the secure perimeter, staff, and inmates.

609-3

This alignment would remove a significant amount of land within the prison grounds from agricultural productions. The disruption of agricultural production, which is the responsibility of the California Prison Industry Authority (CALPIA), would cause economic loss due to reduced production and it would affect opportunities for the productive use of inmates on state-owned land. CDCR also notes that the severance of this portion of the prison's property by placement of the BNSF turning wye's trackage along the western side of the prison complex would impose limitations on the operation of areas potentially needed for water service and wastewater treatment as well as land needed for other CDCR facilities and infrastructure.

609-4

Finally, the BNSF turning wye alternative would result in the need to build an overpass on Road 21 to the west of the main prison complex. The elevated position of such an overpass is a safety concern to our security operations because it provides a "high ground" position in close proximity to a secure perimeter. CDCR believes that creation of new hazards to perimeter security should be avoided if there are feasible alternatives, such as relocation of the trackage to the north of the prison property.

609-5

Draft EIR/EIS Mitigation Measure. S&S-MM#1 "Revise design to avoid safety risk to correctional facilities from roadway overpass" proposes either to eliminate the overpass along Road 21 near the VSPW from the proposed design or to relocate the alignment as shown in Figure 3.11-9 of the Draft EIR/EIS. Eliminating the overpass along Road 21 would have a minor reduction in security and safety effects, and it does not go far enough in addressing all of the effects of trackage encroachment onto VSPW. Completely removing the alignment as shown in Figure 3.11-9 of the Draft EIR/EIS would be the only alternative acceptable to CDCR.

Submission 609 (Deborah Hysen, California Department of Corrections and Rehabilitation,
October 12, 2011) - Continued

Jeff Abercrombie, Area Program Manager Central Valley
Page 3

609-6

Trackage Encroachment onto CCWF. While the alignment of the Hybrid Alternative would encroach only into the southwest corner of the CCWF prison property, CDCR finds that potentially significant problems would result should this route be approved and built. The alignment would affect the integrity of CALPIA agricultural production and the ability to expand in the future, if necessary, the adjacent existing wastewater treatment facilities and operations. As with VSPW, the placement of high-speed rail trackage in close proximity to the secure perimeter of an adult state prison is likely to result in an inevitable conflict with prison operations and public safety. CDCR recommends the Commission reposition this alignment to the southwest onto lands that do not have the constraints of state prison operations.

CDCR looks forward to continuing its participation in the review process for the proposed Merced to Fresno section of this project. Also, we look forward with keen interest to reviewing the Draft EIR/EIS for the San Jose to Merced segment of the high-speed rail project, which will be evaluating east-west connector alternatives (alignment and wyes), including a design alternative (SR 152) that would avoid CDCR property completely.

Thank you again for the opportunity to provide comments on the Draft EIR/EIS for the proposed high-speed rail alignments in the Chowchilla area.

Sincerely,



DEBORAH HYSEN
Deputy Director
Facility Planning, Construction and Management

cc: Chris Meyer, Director, Facility Planning, Construction and Management (FPCM)
George Giurbino, Deputy Director, Division of Adult Institutions
Lydia Hense, Warden (A), CCWF
Walter Miller, Warden (A), VSPW
Marlin Feryance, Correctional Administrator, FPCM
Scott Walker, Assistant General Manager, CALPIA
Nancy MacKenzie, Chief, Environmental Planning Section

Response to Submission 609 (Deborah Hysen, California Department of Corrections and Rehabilitation, October 12, 2011)

609-1

All of the proposed alignments would maintain the continued operation of Avenue 24 as part of the local street system. The UPRR/SR 99 and Hybrid alternatives would maintain the operation of Road 22 as it exists today. The BNSF Alternative would close the existing crossing of Road 22 and the BNSF railroad, and travelers would be required to cross the BNSF railroad and the HST tracks on either Avenue 24 or Avenue 26. Operations on Road 22 to each side of the railroad and HST tracks would be maintained.

609-2

If the BNSF Alternative with the Ave 24 Wye were chosen as the Preferred Alternative, mitigation measure S&S-MM#1 would be implemented. In response to these comments, the mitigation measure has been revised in the EIR/EIS to remove the language regarding the elimination of the overpass along Road 21, which would occur if the alignment were to remain within VSPW property, and to instead commit solely to relocating the alignment outside of VSPW property.

609-3

If the BNSF Alternative with the Ave 24 Wye were chosen as the Preferred Alternative, mitigation measure S&S-MM#1 would be implemented. In response to these comments, the mitigation measure has been revised in the EIR/EIS to remove the language regarding the elimination of the overpass along Road 21, which would occur if the alignment were to remain within VSPW property, and to instead commit solely to relocating the alignment outside of VSPW property.

609-4

If the BNSF Alternative with the Ave 24 Wye were chosen as the Preferred Alternative, mitigation measure S&S-MM#1 would be implemented. In response to these comments, the mitigation measure has been revised in the EIR/EIS to remove the language regarding the elimination of the overpass along Road 21, which would occur if the alignment were to remain within VSPW property, and to instead commit solely to relocating the alignment outside of VSPW property.

609-5

If the BNSF Alternative with the Ave 24 Wye were chosen as the Preferred Alternative,

609-5

mitigation measure S&S-MM#1 would be implemented. In response to these comments, the mitigation measure has been revised in the EIR/EIS to remove the language regarding the elimination of the overpass along Road 21, which would occur if the alignment were to remain within VSPW property, and to instead commit solely to relocating the alignment outside of VSPW property.

609-6

The proposed alignment of the southbound leg of the Ave 24 Wye with the BNSF and Hybrid alternatives cannot be shifted off of CCWF lands without causing additional significant impacts on other resources. To address CDCR concerns, the following text has been added to the impacts discussion in Section 3.11, Safety and Security, in the EIR/EIS: "The placement of the alignment would affect a portion of the agricultural property operated by the prison and could potentially affect the prison's ability to expand adjacent wastewater treatment facilities and operations in the future." The following text has also been added there: "The Authority would compensate the California Department of Corrections and Rehabilitation for any acquisition of CCWF property by following the requirements of the Uniform Relocation Act and/or through the provision of additional land adjacent to the existing CCWF property."

Submission 875 (John M. Lowrie, State of California Department of Conservation, October 14, 2011)

OCT/14/2011/FRI 09:43 AM DEPARTMENT OF CONSERVATION

FAX NO. 916 327 3430

P. 001/012

OCT/14/2011/FRI 09:43 AM DEPARTMENT OF CONSERVATION

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P. 002/012

NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR., GOVERNOR



DEPARTMENT OF CONSERVATION

Managing California's Working Lands

DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0860 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEBSITE conservation.ca.gov

October 14, 2011

VIA FACSIMILE (916) 322-0827

Mr. Dan Leavitt
California High speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Subject: DEIR for the California High Speed Train Project Merced to Fresno -
SCH# 2009091125

Dear Mr. Leavitt:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the DEIR for the California High Speed Train Project Merced to Fresno. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. We offer the following comments and recommendations with respect to the proposed project's potential impacts on agricultural land and resources.

Project Description

The California High-Speed Train System (HST system) will provide intercity, high-speed service on more than 800 miles of tracks throughout California, connecting the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. It will use state-of-the-art, electrically powered, high-speed, steel-wheel-on-steel-rail technology, including contemporary safety, signaling, and automated train-control systems, with trains capable of operating up to 220 miles per hour (mph) over a fully grade-separated, dedicated track alignment.

The Merced to Fresno HST Section is a critical Phase 1 link connecting the Bay Area HST section to the Fresno to Bakersfield, Bakersfield to Palmdale, and Palmdale to Los Angeles HST sections.

Agricultural Setting of the Project

Although each county in the project study area has policies to protect agricultural lands, according to the DOC farmland conversion reports, conversions of Important Farmland

The Department of Conservation's mission is to balance today's needs with tomorrow's challenges and foster intelligent, sustainable, and efficient use of California's energy, land, and mineral resources.

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California High Speed Train Project Merced to Fresno
October 14, 2011
Page 2 of 8

continue to occur. Population growth and the associated urban development pressure primarily drive the loss of Important Farmland; however, losses also can occur if land goes into habitat conservation or confined animal facilities. Williamson Act or Farmland Security Zone (FSZ) contracts in Merced, Madera, and Fresno counties protect Farmland and Grazing Land. Protected farmlands also include lands zoned for agricultural use and lands with agricultural conservation easements. Most of the Important Farmland (Prime, Unique, and Statewide Importance as outlined under the CEQA Guidelines) in the area is zoned for agriculture.

All of the HST alternatives for the Merced to Fresno HST would result in permanent conversion of agricultural land to nonagricultural use. The UPRR/SR 99 Alternative would affect between 1,037 and 1,158 acres of Important Farmland, the BNSF Alternative would affect 1,411 to 1,481 acres, and the Hybrid Alternative would affect 1,291 to 1,420 acres. The variations in design options and wye¹ connections account for differences among the three alternatives. All three alternatives also would convert Grazing Land and other lands zoned for agricultural use.

875-1

Acquisition via Eminent Domain or in Lieu of Eminent Domain

A Williamson Act contract is an enforceable restriction pursuant to Article XIII, §8 of the California Constitution. If a public agency intends to acquire land under Williamson Act contract for a public improvement, the acquisition must meet the requirements of acquisition by eminent domain or in lieu of eminent domain (e.g., Code of Civil Procedure 1230.010 et seq. and Government Code §7260 et seq.) In order to void the contract pursuant to Government Code §51295. The Department does not provide counsel regarding eminent domain law but encourages entities to obtain legal counsel for this purpose.

When an acquisition by a public agency with eminent domain authority, occurs without the use of eminent domain power, the contract remains in effect until and unless terminated by nonrenewal (§51245), cancellation (§51282 – 51284.1), easement exchange (§51256 - 51256.1) or rescission and entry into an open space easement (§51255). Since the contract continues in effect, the uses on the land proposed by a public agency must be compatible with the contract, local rules and ordinances, and Williamson Act statute. If an agency does not have eminent domain authority or chooses not to carry out its eminent domain authority, then the project should be pursued through the termination processes mentioned above.

If the California High Speed Rail Authority (CHSRA) has not already done so, the Department advises notification of Madera, Merced, and Fresno counties that the acquisition of portions of some of the listed parcels may result in parcel sizes below the

¹ Wye - A triangular shaped arrangement of rail tracks with a switch or set of points at each corner.

Submission 875 (John M. Lowrie, State of California Department of Conservation, October 14, 2011) - Continued

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P. 004/012

California High Speed Train Project Merced to Fresno
October 14, 2011
Page 3 of 8

875-1

minimum prescribed for Williamson Act contracted parcels pursuant to Government Code §51222. It this occurs, either the aforementioned counties or the landowner should initiate nonrenewal on the remnant parcels.

The Division has received notification from the CHSRA and is currently preparing a response on public acquisition notification process (§51291(b)) issues in a separate letter. A copy of the Public Acquisition Notice Provisions is enclosed for your assistance.

875-2

Required Williamson Act Cancellation Findings

Under CEQA Guidelines Section 15206(b)(3), a project is deemed to be of statewide, regional or area-wide significance if it would result in the cancellation of a Williamson Act contract for any parcel of 100 or more acres.

Government Code (GC) section 51282 states that tentative approval for cancellation may be granted only if the local government makes **either** of the following findings:

- A. cancellation is **consistent** with purposes of the Williamson Act, **or**
- B. Cancellation is in the **public interest**.

The following are the requirements for the consistency findings required under GC section 51282 (above):

1. A notice of nonrenewal has been served,
2. Cancellation is not likely to result in removal of adjacent land from agricultural use,
3. The alternative use is consistent with the County General Plan,
4. Discontiguous patterns of urban development will not result, and
5. There is no *proximate, noncontracted land*² which is available and *suitable*³ for the use proposed on the contracted land, or, development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

Sections 51282 through 51285 outlines the steps necessary for the cancellation of a Williamson Act contract. Section 51284.1 requires the notice for a tentative cancellation

² "Proximate, noncontracted land" means land not restricted by contract, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land (GC section 51282).

³ "Suitable" for the proposed use means that the salient features of the proposed use can be served by the land not restricted by contract. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontiguous parcels (GC section 51282).

California High Speed Train Project Merced to Fresno
October 14, 2011
Page 4 of 8

875-2

of a contract to be sent as soon as the cancellation application is deemed complete, but not less than 30 (thirty) days prior to the scheduled action by the Board or Council. The Board or Council must consider any comments submitted by the Department when making their findings. A notice of the hearing and copy of the landowner's petition shall be mailed to the Director of the Department of Conservation 10 (ten) working days prior to the hearing as a separate application from any CEQA document. The notice must be mailed to:

Derek Chernow, Acting Director
Department of Conservation
C/o Division of Land Resource Protection
801 K Street MS 18-01
Sacramento, CA 95814-3528

Under Government Code section 51282, the city or county must approve a request for cancellation and base that approval on specific findings that are supported by substantial evidence. When cancellation is proposed, the Department recommends that a discussion of the findings be included in the CEQA document.

875-3

Mitigation Measures in the DEIR

The Merced to Fresno DEIR provides two mitigation measures for the loss of Important Farmland. They are quoted below for reference:

Ag-MM #1: Preserve the Total Amount of Prime Farmland, Farmland of Statewide Importance, Farmland of Local Importance, and Unique Farmland. Coordinate with DOC to identify suitable land for mitigation and purchase agricultural conservation easements from willing sellers at a ratio of no less than 1:1, to preserve Important Farmland in an amount commensurate with the quantity and quality of converted farmlands. Work directly or through donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements (e.g., Central Valley Farmland Trust, Sequoia Riverlands Trust, and resource conservation districts). Establish easements in the same agricultural regions as the impacts occur.

Ag-MM #2: Consolidate Non-Economic Remnants. Create a farmland consolidation program to sell non-economic remnant parcels to neighboring landowners for consolidation with adjacent property with the goal of providing for continued agricultural use on the maximum feasible amount of non-economic remnant parcels.

Submission 875 (John M. Lowrie, State of California Department of Conservation, October 14, 2011) - Continued

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California High Speed Train Project Merced to Fresno
October 14, 2011
Page 5 of 8

875-3

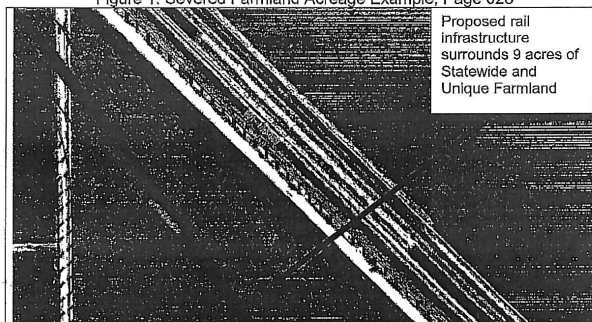
With regard to Mitigation Measures Ag-MM #1, the American Farmland Trust has not held new agricultural conservation easements for several years. Along with Central Valley Farmland Trust, The Sequoia Riverlands Trust and responsible Resource Conservation Districts would be more appropriate stewards for holding agricultural conservation easements within these counties.

875-4

Mitigation Measure Ag-MM #2 deals with severed parcels with respect to the conversion of farmland. The Project Footprint Appendix 3.1-A⁴, shows multiple parcels that are severed by being bounded on one or two sides by the proposed HST and on another side by a major road, highway, residential neighborhood, irrigation canal and/or completely bounded by HST track and, as such, have resulted in slivers or islands of farmland. These slivers or islands are not identified as being a component of the 'direct effects' to agricultural land in the DEIR.

For example, the severed farmland acreage on Page 023 (APN 067-180-004), per the DEIR, does not qualify for mitigation as specified by the direct effect or permanent impact classification. Refer to Figure 1 below:

Figure 1: Severed Farmland Acreage Example, Page 023



It is highly advisable that the severed acreage in these parcels be given direct-effect-permanent impact status because this acreage cannot be consolidated with neighboring

⁴ Merced to Fresno DEIR on the Vol II, Project Footprint Appendix August 2011

California High Speed Train Project Merced to Fresno
October 14, 2011
Page 6 of 8

875-4

farmland and/or cannot be accessed safely for agriculture production purposes. Table 1 includes examples of acreage that should be added to the values outlined in Ag-Mitigation Measure Ag-MM #1.

Table 1: Severed Farmland Acreage Examples Requiring Revision

Page Number	Identification number (APN)	Acreage bounded by infrastructure and proposed HST and not farmable (acres)	Important Farmland Category
005	057-038-032	1.0	Prime
013	066-032-004	7.09	Statewide
014	066-033-004	1.0 ; .1	Statewide; Prime
014	066-272-002	.2; 4.6; 1.3	Prime; Statewide; Local
014	066-272-003	4.3	Local
019	066-180-008	17.0	Local
023 & 24	067-180-004	9.0; 9.3	Statewide; Unique
025 & 27	075-110-046	24.0; 7.2; 58.3 (narrow strip)	Prime; Statewide; Unique
026	075-100-025	.4; 27.4; .8	Prime; Statewide; Unique

The Division believes that Mitigation Measure Ag-MM #2 is not entirely feasible nor enforceable because it does not do the following:

- Specify the agency responsible for creating the farmland consolidation program,
- Designate a completion deadline for the farmland consolidation program when all the non-economic remnants will be sold to neighboring landowners,
- The mitigation measure does not ensure that it is fully enforceable because of permit conditions, agreements or other measures, or by incorporating the mitigation measure into the plan, policy, or project design (Public Resources Code section 21081.6(b))

Severed Parcels and Farmland Protection Policy Act

In Section 3.14-2, the DEIR states that the Farmland Protection Policy Act (FPPA) "applies to projects and programs sponsored or financed in whole or in part by the federal government". The DEIR further states that the "FPPA implementing regulations spell out requirements to ensure that federal programs, to the extent practical, are compatible with state, local, and private programs and policies to protect farmland".

Submission 875 (John M. Lowrie, State of California Department of Conservation, October 14, 2011) - Continued

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California High Speed Train Project Merced to Fresno
October 14, 2011
Page 7 of 8

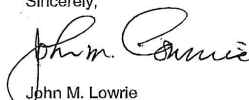
Mitigation Measure Ag-MM #2 does not comply with the FPPA requirements to ensure that the land severed will be compatible with local programs and policies to protect farmland. For example, the HST will create two separate subminimum parcels out of APN 025-140-008⁵. These two new parcels will both be below the 40 acres required per Madera County Zoning Code for this parcel (Agriculture Exclusive). Thus, Ag-MM #2 fails to address the local policies, in this case zoning, required by FPPA. A lot-line adjustment is a practical way to remedy this problem.

It is highly advised that the Mitigation Measure Ag-MM #2 be revised by stating that:

- the California High-Speed Rail Authority Right of Way Agency is the responsible agency;
- the completion deadline for the consolidation program will be within 5 years after the Merced to Fresno Section is finished or connected to the other HST sections (whichever comes first);
- The Right of Way Agency will work with landowners and local government to complete lot line adjustments (including funding these adjustments) to bring the subminimum severed parcels back into compliance with agricultural zoning for that county or city.

Thank you for giving us the opportunity to comment on the DEIR for the California High Speed Train Project Merced to Fresno. Please provide this Department with the date of any hearings for this particular action, and any staff reports pertaining to it. If you have questions regarding our comments, or require technical assistance or information on agricultural land conservation, please contact Meri Meraz, Environmental Planner, at 801 K Street, MS 18-01, Sacramento, California 95814, or by phone at (916) 445-9411.

Sincerely,


John M. Lowrie
Program Manager
Williamson Act Program

Enclosure: Public Acquisition Notice Provisions

cc: State Clearinghouse

⁵ Merced to Fresno DEIR on the Vol II, Project Footprint Appendix, page 185

California High Speed Train Project Merced to Fresno
October 14, 2011
Page 8 of 8

cc: Farm Bureaus

Fresno County Farm Bureau 1274 W. Hedges Avenue Fresno, CA 93728 FAX (559) 237-3396
Merced County Farm Bureau P.O. Box 1232, Merced, CA 95341 FAX (209) 722-3814
Madera County Farm Bureau 1102 South Pine Street Madera, CA 93637 FAX (559) 674-0529

cc: Planning Departments

Fresno County Public Works and Planning 2220 Tulare Street, 6th floor Fresno, CA 93721 FAX (559) 600-4548
Merced County Planning & Community Development 2222 M Street Merced, CA 95340 FAX (209) 726-1710
Madera County Planning Department 2037 W. Cleveland Ave M.S. G Madera, CA 93637 FAX (559) 675-6573
City of Merced Planning Department 205 West Fourth Street Madera, CA 93637 drandall@cityofmadera.com
City of Chowchilla Planning Division 130 S. Second St. Civic Center Plaza Chowchilla, CA 93610 communitydevelopment@ci.chowchilla.ca.us
City of Fresno Planning & Development 2600 Fresno Street Room 3043 Fresno, CA 93721-3604 FAX 559-498-1012

cc: County BOS

Fresno County Board of Supervisors 2281 Tulare Street, #301 Hall of Records Fresno, CA 93721-2198
Merced County Board of Supervisors 2222 M Street Merced, CA 95340 FAX (209) 726-7977
Madera County Board of Supervisors 200 West 4th Street Madera, California 93637 FAX (559) 673-3302

Submission 875 (John M. Lowrie, State of California Department of Conservation, October 14, 2011) - Continued

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LAND CONSERVATION (WILLIAMSON) ACT PUBLIC ACQUISITION NOTIFICATION
PROCESS

The following is information about public acquisition and the notification process for public acquisition of land located in an Agricultural Preserve and/or under Land Conservation (Williamson) Act contract:

What is Public Acquisition? (PA)

- Acquisition of land located in an "agricultural preserve" by a "public agency" or "person" (Government Code section 51291, subd. (a)) for a "public improvement" as defined by Government Code section 51290.5 (which includes interests in real property).

When is Notice Required?

- Whenever it appears that land within an agricultural preserve may be required by a public agency or person (acting on behalf of a public agency) for a public use, the public agency or person shall advise the Director of Conservation and the local governing body responsible for the administration of the agricultural preserve of its intention to consider the location of a public improvement within the preserve (Government Code section 51291(b)).

What Notice is not Notice.

- Public Acquisition Notice must be provided separately from CEQA environmental notice. CEQA Notice does not equal Williamson PA Notice.

What are the Legal Requirements for Notice?

- The requirement to notice occurs three times in Williamson Act statute.

FIRST NOTICE: A PA must notify (1) the Director of the Department of Conservation and (2) the local jurisdiction administering the agricultural preserve (City/County) when the PA has the intention to acquire land in an agricultural preserve for a public purpose (Government Code section 51291(b)).

The **First Notice** prior to acquisition should include the following information:

1. The public agency's explanation of [its] preliminary considerations of the findings of Government Code section 51292 (a) and (b));
 2. A description of the agricultural preserve land the public agency intends to acquire for the public improvement;
 3. A copy of any Williamson Act contract which pertains to the subject land (Government Code section 51291(b)).
- The Department must be notified in advance of any proposed public acquisition (Government Code sections 51290-51295), and specific findings must be made by the public agency.
 - The public agency must consider the Department of Conservation's comments in response to the first notice prior to taking action on the acquisition.
 - The property must be acquired by eminent domain or in lieu of eminent domain in order to void the contract (Government Code section 51295).

Updated October 28, 2009
Continued on page 2

LAND CONSERVATION (WILLIAMSON) ACT PUBLIC ACQUISITION NOTIFICATION
PROCESS (Continued)

SECOND NOTICE:

Second Notice occurs within 10 days of acquisition and should include:

- After acquisition (escrow has closed), the PA shall notify the Director of Conservation within 10 working days (Government Code Section 51291 (c));
1. The notice shall include a general explanation of the decision and the findings made pursuant to section 51292.
 2. A general description, in text or by diagram, of the agricultural preserve land acquired (a vicinity map is good);
 3. And, a copy of any applicable Williamson Act contract(s).

THIRD NOTICE (If needed):

- If there is a significant change in the public improvement, the PA must provide notice to the Department and the local jurisdiction (e.g. the amount of land acquired increases or decreases, or project design changes) (Government Code section 51291(d)); **OR**
- If the PA decides not to acquire the property and/or decides to return the property to private ownership;
- If the PA decides not to use the land for the public improvement the land must be placed under a contract that is as restrictive as the one it was under before acquisition occurred (Government Code Section 51295).

All required Notices should be sent to:

Bridgett Luther, Director
Department of Conservation
Division of Land Resource Protection
801 K Street, MS 18-01
Sacramento, CA 95814-3528

Updated October 28, 2009

Submission 875 (John M. Lowrie, State of California Department of Conservation, October 14, 2011) - Continued

06/14/2011/PK1 09:44 AM DEPARTMENT OF CONSERVATION

FAA NO. 910 327 3430

F. 011/012

06/14/2011/PK1 09:44 AM DEPARTMENT OF CONSERVATION

FAA NO. 910 327 3430

F. 012/012

ACQUISITION NOTIFICATION PROVISIONS OF THE WILLIAMSON ACT

Notification provisions of the Williamson Act (Government Code Section 51291) require an agency to notify the Director of the Department of Conservation of the possible acquisition of Williamson Act contracted land for a public improvement. Such notification must occur when it **appears** that land enrolled in a Williamson Act contract may be required for a public use, being **acquired**, the original public improvement for the acquisition is **changed**, or the land acquired is **not used** for the public improvement. The local governing body responsible for the administration of the agricultural preserve must also be notified.

NOTIFICATION (Government Code Section 51291 (b))

The following information must be included in the notification correspondence.

1. The total number of acres of Williamson Act contracted land to be acquired and whether the land is considered prime agricultural and according to Government Code Section 51201.
2. The purpose for the acquisition and why the parcel was identified for acquisition. If available, include documentation of eminent domain proceedings or a property appraisal and written offer in lieu of eminent domain per GC §§7267.1 and 7267.2 to void the contract per §51295; include a chronology of steps taken or planned to effect acquisition by eminent domain or in lieu of eminent domain.)
3. A description of where the parcel(s) is located.
4. Characteristics of adjacent land (urban development, Williamson Act contracts, noncontract agricultural, etc.)
5. A vicinity map and a location map (may be the same as #8)
6. A copy of the contract(s) covering the land.
7. CEQA documents for the project
8. The findings required under GC Section 51292, documentation to support the findings and an explanation of the preliminary consideration of Section 51292 (include a map of the proposed site and an area of surrounding land identified by characteristics and large enough to help clarify that no other, noncontract land is reasonably feasible for the public improvement).

ACQUISITION (Government Code Section 51291 (c))

The following information must be included in the notification when land within an agricultural preserve has been **acquired**. The notice must be forwarded to the Director within **10 working days** of the acquisition of the land. The notice must also include the following:

1. A general explanation of the decision to acquire the land, and why noncontracted land is not available for the public improvement.
2. Findings made pursuant to Government Code Section 51292, as amended.
3. If the information is different from that provided in the previous notice sent upon consideration of the land, a general description of the land, and a copy of the contract covering the land shall be included in the notice.

SIGNIFICANT CHANGE IN PUBLIC IMPROVEMENT (Government Code Section 51291 (d))

Once notice is given as required, if the public agency proposed any significant change in the public improvement, the Director must be notified of the **changes** before the project is completed.

LAND ACQUIRED IS NOT USED FOR PUBLIC IMPROVEMENT (Government Code Section 51295)

If the acquiring public agency does not use the land for the stated public improvement and plans to return it to private ownership, **before** returning the land to private ownership the Director must be notified of the action. **Additional requirements apply.** The mailing address for the Director is: **Bridgett Luther, Director, Department of Conservation, 801 K Street, MS 18-01, Sacramento, CA 95814; phone (916) 324-0850**

August 2008

Response to Submission 875 (John M. Lowrie, State of California Department of Conservation, October 14, 2011)

875-1

The Authority will comply with all applicable statutes regarding the acquisition of Williamson Act lands. This is a legal requirement. See MF-Response-AGRICULTURE-7.

875-2

The Authority submitted a notification packet (dated September 7, 2011) for public acquisition of portions of properties under Williamson Act contracts, including draft findings as discussed in the comment. In response to the Department of Conservation's request to resubmit the notification packet for only the Preferred Alternative (now recommended to be the Hybrid Alternative), the Authority resubmitted the notification packet in early April, 2012. Also see MF-Response-AGRICULTURE-7.

875-3

The text of Ag-MM#1 has been updated to clarify responsibilities for agricultural conservation easements. The updates are consistent with recent coordination activities between the Authority and the Department of Conservation, including reference to DOC's California Farmland Conservancy Program as the primary agent to implement the mitigation measure.

875-4

The commenter identifies nine examples of properties that it believes should have been included in the project's acquisition footprint. In one case (Merced County APN 057-038-032), the Authority agrees that the remainder property should be acquired and has expanded the acquisition footprint for the Final EIR/EIS. [Note, however, that this parcel is along the approach track to the proposed Castle HMF – see MF-Response-GENERAL-20.] With regard to the other eight parcels, however, the Authority disagrees that the remainders would no longer be usable. In each case, parcel sizes would be sufficient for some productive use and access would be provided. None of these other eight parcels have been added to the acquisition footprint for the Final EIR/EIS.

The commenter raises three questions about Mitigation Measure Ag-MM#2, regarding creation of a farmland consolidation program. The responses to these three questions are as follows:

- Clarification about implementation responsibility has been added. The Authority will establish and implement the program.

875-4

- The completion deadline will depend on the phased implementation of the section. New text has been added stating that the program will operate for a minimum of 5 years after construction of the section is completed.
 - The Authority does not understand how Ag-MM#2 is not "fully enforceable." It will be established and implemented by an entity of the State of California with the legal obligation to carry out its CEQA mitigation commitments.
- For additional information about consolidation of unusable remainder parcels, see MF-Response-AGRICULTURE-3.

The commenter also states that Mitigation Measure Ag-MM#2 does not comply with the Farmland Protection Policy Act because it does not ensure that severed parcels would be compatible with local programs and policies for farmland protection. Specifically, the commenter refers to county zoning standards as the relevant local program and policy for farmland protection, and requests that the Authority fund and complete lot-line adjustments to ensure compliance with minimum parcel size requirement. Although the Authority agrees that parcel mergers and lot-line adjustments are part of the acquisition and consolidation toolkit, this requested change has not been made to the text. The Authority believes that there is little danger of additional farmland losses from creating parcels that do not comply with zoning standards. During the property acquisition process, the Authority can work with affected landowners to comply with local government requirements; for example, parcel mergers and lot-line adjustments can be used on a case-by-case basis, subject to negotiation, to reconcile these conflicts.